

I. FACTUAL FINDINGS

1. On February 2, 2011, Branch Banking & Trust (BB&T) filed the above-captioned case to foreclose a mortgage securing a note owed to BB&T by CPH. The original amount owed on the note was \$585,000.00.

2. The mortgage encumbers real property in Spartanburg County on which a car wash was operating that was owned by CPH.

3. The United States of America, by and through the Small Business Administration (SBA), was named as a party because it holds a subordinate mortgage; Carolina Clean Greer I (Carolina Clean) was named as a defendant because it was a prior operating company and is alleged in the complaint to hold a possible lien on personal property located on the property; and Community Development & Improvement Corporation (CDIC) was named as defendant because it holds a subordinate lien on the property. Parker had personally guaranteed the SBA loan in the amount of \$133,000.00.

4. Parker filed an answer and counterclaim against BB&T on September 1, 2011.

5. On September 16, 2011, Super Suds, LLC purchased the subject loan from BB&T and accepted an assignment of mortgage.

6. On October 27, 2011, Parker and CPH dismissed their counterclaims against BB&T.

7. On October 31, 2011, Super Suds was substituted as Plaintiff and a Notice of Appearance was filed by Allan Hill.

8. Allan Hill, attorney for Super Suds, drafted and sent a deed-in-lieu of foreclosure (DIL) to defendant Parker through which Parker on behalf of CPH conveyed title to the subject property to Super Suds, the holder of the first mortgage loan.

9. Parker promptly executed the DIL on October 24, 2011, and returned it to Mr. Hill.

10. The DIL purported to convey absolute title to the property and provides, in pertinent part, as follows:

The consideration for this deed is the satisfaction and cancellation of the indebtedness from the Grantor to the Grantee as evidenced by its mortgage dated October 21, 2005, which mortgage was recorded in the ROD mortgage book 3542, at page 190. The loan balance of said mortgage and the note secured by said mortgage is the sum of \$601,427.10, together with accrued interest as computed as the annual percentage rate as set forth in the note.

Grantor, in executing and delivering this deed to Grantee, acknowledges that this is an absolute deed and not a mortgage. Grantor further acknowledges that he is conveying complete title to the above described property to the Grantee herein and the Grantor has no further interest of any nature whatsoever in and to the above described property or any improvements thereon.

DIL dated October 24, 2011.

11. Immediately after delivery of the DIL, Super Suds assumed possession of the property and began operating its business. Super Suds has operated the car wash continuously since that time on the property.

12. The case lay dormant on the roster for the Court of Common Pleas from October 31, 2011 to September 25, 2014, when an order of reference moved the case to the Master-in-Equity.

13. The matter came before this Court on September 12, 2016, for a hearing and the Court ordered the hearing continued to allow time for discovery.

14. After the September 12, 2016 hearing, activity commenced on the matter.

15. Defendants Parker and CPH filed a motion to dismiss on April 5, 2017. Plaintiff filed a Motion for a Declaration under Rule 43(k) of the SCRPC on April 18, 2018. The parties since engaged in discovery.

16. On July 17, 2017, the Court heard the Defendant's Motion to Dismiss, and Plaintiff's Motion for a Declaration under Rule 43(k) of the SCRPC.

17. The record before the court on the hearing of these motions includes the pleadings; the case history of record in the Spartanburg County Court of Common Pleas; excerpts from the depositions of Ken Howard dated June 14, 2018, owner of the plaintiff Super Suds, and Walt Parker Defendant and principal of the Defendant CPH, dated June 14, 2018; and an Affidavit of Walt Parker filed August 4, 2017.

18. Thereafter, on September 27, 2018, this Court signed and filed an Order Denying Plaintiff's Motion for Declaration Under Rule 43(k), SCRPC, and an Order Granting Defendant Carolina Properties Holdings, LLC, and Walter W. Parker, IV's Motion for Summary Judgment.

19. On October 8, 2018, Plaintiff filed motions to reconsider each order.

20. On October 29, 2018, Defendants, CPH and Parker, filed a Motion to Strike.

II. DISCUSSION

21. The Court considered all factors and the full record in determining whether to issue a declaration under Rule 43(k), SCRPC.

22. The intent of the Court in denying the motion for declaration was to promote a just result.

23. The Court found the parties' intentions of the parties to convey property evidenced by the transfer of title to the subject property via the Deed in Lieu of Foreclosure, and Super Suds' possession of the property since 2011 without record of an accounting of rents and

profits. Accordingly, the Court did not issue a declaration under Rule 43(k), SCRCP, and the Plaintiff's motion is denied. The Court's ruling on Summary Judgement shall stand and based on the merger of title upon delivery of the DIL to Plaintiff's attorney, Super Suds has no standing to pursue this foreclosure action.

III. CONCLUSION

For the foregoing reasons, the Court finds that Plaintiff's Motion for Reconsideration of the Order Denying Declaration Under Rule 43(k), SCRCP, is DENIED.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW]



Spartanburg Common Pleas

Case Caption: Branch Banking And Trust Company , plaintiff, et al VS Carolina Properties Holdings Llc , defendant, et al
Case Number: 2011CP4200500
Type: Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065